

Albany
Atlanta
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McKenna Long & Aldridge LLP

Attorneys at Law

1900 K Street, NW • Washington, DC 20006-1108
Tel: 202.496.7500 • Fax: 202.496.7756
www.mckennalong.com

New York
Philadelphia
Sacramento
San Diego
San Francisco
Washington, D.C.

CHARLES R. SPIES

EMAIL ADDRESS

June 8, 2009

VIA HAND DELIVERY

Jeff S. Jordan, Esq.
Supervisory Attorney
Federal Election Commission
999 F. Street, NW
Washington, DC 20463

Rec'd OAC
JUN 10 2009
10:15 a

Re: MUR 6190 / Respondent Kelly Bearden

Dear Mr. Jordan:

On behalf of Kelly Bearden, this letter is submitted in response to the Complaint filed by her estranged husband, David Bearden ("Complainant"), alleging violations of the Federal Election Campaign Act (the "Act") and now labeled MUR 6190. For the reasons set forth below, the allegations in the Complaint are baseless and retaliatory, and the Commission should decline to take further action and close this matter.

In late March of 2008, Kelly Bearden ("Respondent"), filed for divorce against the Complainant. These divorce proceedings are ongoing and contentious in nature. Complainant created these allegations, and went so far as to file this Complaint against his wife and her family, in what appears to be some sort of attempt at retaliation and revenge for the investigations that are being conducted against himself as a result of information that has come to light in his divorce proceedings. No evidence, other than his own self-serving hearsay, has been provided that supports Complainant's charges, and he should not be permitted to abuse the Commission's complaint process to further his personal agenda in a divorce proceeding. Every person who could potentially have first-hand knowledge of the supposed conduct that Complainant alleges has provided a sworn affidavit disputing his charges and, considering the context in which they have been raised, the charges should not be taken seriously.

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Factual Background

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Mrs. Bearden is active in her community and generously contributes to political candidates and charitable causes that she believes in. Affidavit at #2. She and her husband had a joint checking account at National City Bank that they both deposited money into, and made their joint political and charitable contributions out of. Affidavit at #7. Both owners of the account (Kelly and David Bearden) deposited money into the account on a monthly basis, and both owners independently, as well as jointly, spent money out of this joint account on a day-to-day basis. See Complaint at Exhibit A (showing multiple deposits and withdrawals to and from the joint account); Affidavit at #6, 7. In late February of 2009, Mr. and Mrs. Bearden made a joint contribution out of this joint-checking account to the John McCain for President campaign. Both Complainant and Mrs. Bearden were strong supporters of Sen. McCain, and Complainant attended a fundraising event with Sen. McCain and proudly displayed a photograph of himself and Sen. McCain in the living room of his home. Affidavit at #8. Both Mr. and Mrs. Bearden also used this joint-checking account to make joint charitable contributions. See K. Bearden Exhibit 1 (joint-contribution acknowledgements from various organizations).

Mrs. Bearden has frequently made political contributions from herself, or jointly along with her husband (Complainant), and has never been reimbursed, directly or indirectly, by any individual or entity, for any such political contribution that she has made. Affidavit at #4. Specifically, she was not reimbursed by her father, Norman Byrne, for her contribution to the McCain for President campaign. Affidavit at #5.

In late March of 2008 Mrs. Bearden filed divorce papers against her husband, Complainant, and in May of 2008 they engaged in a heated discussion that resulted in all future communications (other than regarding the logistics of visitation of their children) being conducted through their respective attorneys. Subsequently, they were not engaging in "small talk" conversations in or around the month of June 2008, and they certainly did not discuss political contributions (or the reimbursement thereof) during that time-period. Affidavit at #9. Mrs. Bearden is not aware of her father (Norman Byrne) ever reimbursing a political contribution by any of his relatives, or employees of Byrne Industrial Specialists, and she never stated anything to that effect to Complainant. Affidavit at #10.

Legal Analysis

The Complaint, without any factual support, lodges two distinct allegations. The first is essentially that Complainant now wishes to rescind his portion of a joint-contribution that was made with his wife, which he is now - more than a year after the fact - claiming that he didn't authorize or support. The second allegation is that his wife's father reimbursed the political contributions of his family members. The allegations will be addressed in reverse order.

A. Reimbursement Allegation

In regards to the allegation of reimbursed contributions, the only even purported "evidence" of such reimbursement is Complainant's self-serving recollection of hearsay conversations, which allegedly took place at a time-period when he was, in fact, having no such conversations at all with his wife. Mrs. Bearden has provided a sworn affidavit explaining why such conversation not only did not, but could not have, taken place. In addition, each of individuals who allegedly had their contributions reimbursed has provided (accompanying their own responses to this Complaint) a sworn affidavit that flatly and comprehensively disputes the Complainant's allegations that their political contributions were reimbursed, or that they have committed any sort of violation of the Act or Commission Regulations.

The allegations of reimbursement by Complainant would indeed, if true, be a serious violation of 2 U.S.C. § 441(f) and 11 C.F.R. 110.4(b)(2007). The allegations, however, are unsupported by any evidence or first-hand knowledge and consequently should not be treated as credible by the Commission. Complainant does not claim to have first-hand knowledge of any violations of the Act, instead he asserts vague third-hand knowledge. In reality, all parties who would have first-hand knowledge if the alleged contribution reimbursements had taken place have, in sworn affidavits, fully disputed Complainant's allegations. This lack of first-hand knowledge or evidence, when combined with Complainant's malicious and retaliatory motivations, mean that his allegations should be afforded no weight at all by the Commission.

In addition, a complaint filed with the Commission should be accompanied by documentation supporting the facts alleged, *See* 11 C.F.R. § 111.4 (d)(4), and in this case there is no relevant evidence or documentation supporting the reimbursement allegation. The documentation provided by Complainant that allegedly "evidences illegal conduct," Complaint at 3, is in fact just a listing of contributions made by members of the Byrne family. The fact that contributions from several Byrne family members were made "on the same exact day," *Id.*, [emphasis in original], is evidence only of the fact that family members attended the same fundraising events and turned in contributions at the same time. That information is superfluous to the allegation that such contributions were reimbursed and not sufficient to meet the standard of 11 C.F.R. § 111.4 (d)(4).

B. Joint Contribution Allegation

Complainant also alleges that Mrs. Bearden made a contribution to the McCain campaign out of the joint-checking account that he shared with her, and that he "would never make any contribution to any politician based upon my personal beliefs." *See* Complaint at Page 2. That statement is simply not believable, in light of the fact that Complainant not only enthusiastically attended the fundraiser for Sen. McCain, but also got his picture taken with Sen. McCain and proudly displayed said photograph in a prominent location in his living room. The established facts are that Complainant and Mrs. Bearden had a joint checking account, to which the both contributed money and spent money out of. They jointly made contributions to political and charitable organizations out of this account, and in late February of 2008 a contribution was

Jell S. Jordan, Esq.
June 8, 2009
Page 4

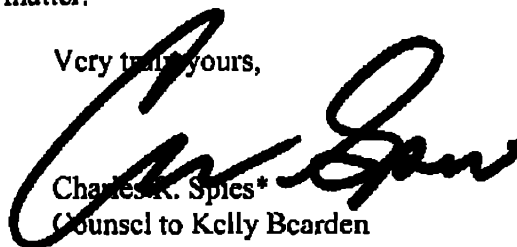
made out of this account to the McCain for President campaign. We know that Complainant received a "best efforts" letter from the McCain campaign, *See* Complaint at Exhibit B, but at that point apparently did not ask for a contribution refund or inform the campaign that he has not wished to contribute. We can speculate that what most likely occurred in this case is that because Mrs. Bearden made a contribution that was partially excessive on a written instrument with more than one individual's name imprinted on it, but with only Mrs. Bearden's signature, the McCain for President campaign presumptively reattributed the excessive portion of the contribution (in this case \$2,000) to the other individual whose name was imprinted on the written instrument (the Complainant, her husband David Bearden). Assuming the McCain campaign followed the rules for presumptive reattribution found at 11 C.F.R. § 110.1 (k)(3)(ii)(B)(1), then it would appear that the only person who did anything even arguably "wrong" is Complainant, who apparently did not take the McCain campaign up on their offer of a refund instead of reattribution and now, a year later, wishes that he had. This is not the sort of matter that, especially in light of the allegation arising over a year after-the-fact in the midst of contentious divorce proceedings, warrants the use of Commission resources to investigate.

Conclusion

The clear purpose of this Complaint is retaliatory harassment of Mrs. Bearden (and her family) in the context of her and Complainant's contentious divorce proceedings. The Complaint fails to present any reason to believe that Mrs. Bearden committed a violation of the Act or Commission Regulations, and the Commission should not tolerate Complainant's flagrant abuse of the Commission's complaint process (as well as the Commission's valuable time and resources) for his own personal agenda. Mrs. Bearden therefore respectfully requests that the Commission dismiss this Complaint and take no further action.

Thank you for your consideration in this matter.

Very truly yours,



Charles R. Spies*
Counsel to Kelly Bearden

*Admitted only in Virginia
Supervision by Stefan Passantino
a member of the DC Bar.

Enclosures: _____ Exhibit and Designation of Counsel

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Albany
Atlanta
Brussels
Denver
Los Angeles

**McKenna Long
& Aldridge**
Attorneys at Law

1900 K Street, NW • Washington, DC 20006
Tel: 202.496.7500 • Fax: 202.496.7756
www.mckennalong.com

New York
Philadelphia
San Diego
San Francisco
Washington, DC

CHARLES R. SPIES

EMAIL ADDRESS

VIA FACSIMILE (202) 219-3923

**BEFORE THE FEDERAL ELECTION COMMISSION
STATEMENT OF DESIGNATION OF COUNSEL**

MUR # 6190

Name of Counsel: Charles R. Spies
McKenna Long & Aldridge LLP
1900 K Street, NW
Washington, DC 20006

Telephone: _____
Fax: (202) 496-7756

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

5/26/09 Kelly Bearden
Date Respondent/Client Signature

Title

Respondent/Client: Ms. Kelly Bearden

Ada, MI 49301

Telephone - Home:

Business:

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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